CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND DEANIA JACKSON	*	
VERSUS	*	NO. 96-8461 DIVISION "I" SECTION 14
THE AMERICAN TOBACCO COMPANY, INC., ET AL.	*	

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Transcript of proceedings before The Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *

Friday Afternoon Session
June 6, 2003
1:34 p.m.

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I N D E X

WITNESS: PAGE
JERRY F. WHIDBY, Ph.D.
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P R O C E E D I N G S

THE MINUTE CLERK:
All rise for the jury, please.
(Whereupon the jury joins the proceedings at this time.)
THE MINUTE CLERK:
All rise, please. Recess is over.
Court will come to order. Please be seated.
THE COURT:
Good afternoon, everyone.
THE JURY:
Good afternoon.
THE WITNESS:
Good afternoon, sir.
THE COURT:
Mr. Herman.
MR. RUSS HERMAN:
Thank you.
Good afternoon, Your Honor. Good afternoon, ladies and gentlemen.
THE JURY:
Good afternoon.
MR. RUSS HERMAN:
Good afternoon, Dr. Whidby --
THE WITNESS:
Good afternoon, sir.
MR. RUSS HERMAN:
-- and learned counsel.

CONTINUED CROSS-EXAMINATION

BY MR. RUSS HERMAN:
Q. Are you familiar with Philip Morris documents about Philip Morris cigarettes or designs that

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looked like a health cigarette but really weren't?
A. No.
Q. You haven't seen that document in your document searches and in your preparation; is that correct?
A. I don't know what document you're talking about.
Q. Let me show you Exhibit 3190.
A. Thank you.
Q. You're welcome, sir.
Have you seen this before, sir?
A. (Witness reviews document.) I do not recall seeing the document. Maybe I've seen it in preparation for litigation, but I don't recall it at all.
MR. RUSS HERMAN:
It's in evidence but I don't believe the jury has seen it.
Your Honor, I'd like to put up Exhibit 3190 and publish it.

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MR. GAY:
No objection, Your Honor.
THE COURT:
You may publish it.
EXAMINATION BY MR. RUSS HERMAN:
Q. Again, it's from Dr. Seligman and it's on Philip Morris stationery; correct?
A. Yes.
Q. And yesterday you talked about the invention or device of the long filter; did you not?
A. I don't remember talking about it, no.
Q. About a long filter, you don't --

A. A longer filter.
Q. A longer filter.
Would you please publish or enlarge for me, Mr. Gethers, the "Subject: Long Filter Discussion," from that forward up.
Thank you.
Now, this is in 1966, the discussion, okay?
A. Yes.
Q. Correct?
Now, would you go down, Carl, and highlight the first sentence, please, "While in the New York office...."
Jet Lincoln worked in the New York office; didn't he?
A. I think he did. I'm not sure exactly where he was working then at this point or at any other time, really.
Q. And Mr. Tamol and Dr. Seligman, they worked in Richmond; didn't they?
A. They did while I was there. I believe Dr. Seligman was at one time in New York but, certainly, part of the time he was in Richmond.
Q. And have you seen the document between where Tamol -- Mr. Tamol records Jet Lincoln as being fascinated with the illusion of filtration?
A. I may have seen a document like that in preparation for this case. I don't recall exactly.
MR. RUSS HERMAN:
Now, I'd like for you, Carl, to go to the sentence that says, "Jet was intrigued with the fact...." It's the second-to-last sentence in the first paragraph. That's it.

Thank you.
EXAMINATION BY MR. RUSS HERMAN:
Q. "Jet was intrigued with the fact that the cigarette looked like a health cigarette but really wasn't." Do you see that?
A. I see that.
Q. You've never seen this Philip Morris document before?
MR. GAY:
Objection. Asked and answered.
MR. RUSS HERMAN:
I'll move on.
EXAMINATION BY MR. RUSS HERMAN:

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Q. Let me ask you this question.
I withdraw the question.
While you were involved in the design of expanded tobacco, wasn't that concept really an illusion to sell more cigarettes rather than to create a better cigarette?
A. Absolutely not.
Q. Now, --
A. We use expanded tobacco to have less tobacco in the cigarette. And it's pretty obvious it's got less tobacco in the cigarette. When you burn the tobacco, you generate less smoke.
Q. Is it obvious, sir, to you that if you're addicted and you need a certain level of nicotine and there's less tobacco in the smoke, you need to smoke more cigarettes to sustain the level of addiction?
A. I'm not an expert in addiction. I don't think so. I don't -- I don't know the answer to

your question.
Q. Well, sir, isn't it true that expanded tobacco costs less than actual tobacco?
A. No. Actually, expanded tobacco costs more because we have to put it through the process. It costs money to put it through the process.
Q. Sir, --
A. On a per-pound basis, expanded tobacco is more expensive than nonexpanded tobacco.
Q. Sir, when you buy the actual tobacco and you expand it, you need less tobacco to buy to fill the cigarette rod; isn't that true?
A. I've already said that's the case, yes.
Q. Now, let's look at a Philip Morris study -- we can take that down -- in 1975 while you were there, okay?
A. Okay.
Q. Barbro Goodman was in Research & Development at Philip Morris?
A. She was, yes.
Q. And at that time you had what you would call yesterday a human type smoking machine different than what the government was using; correct?
A. Yes.
MR. RUSS HERMAN:
Could I have, Regina, that boxful of Philip Morris cigarettes, please?
EXAMINATION BY MR. RUSS HERMAN:
Q. Wasn't it your understanding while you were at Philip Morris that light cigarettes were to give the impression to the consumer that they were getting less tar and nicotine?

A. Well, light cigarettes gave less tar and nicotine when we were comparing it within the same brand family.
MR. RUSS HERMAN:
May I approach the witness, Your Honor?
THE COURT:

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Yes.
EXAMINATION BY MR. RUSS HERMAN:
Q. Sir, these cigarettes are in evidence.
A. Okay.
Q. A box of Marlboro Reds.
A. Right. Thank you.
Q. A box of Marlboro Lights.
A. Thanks.
Q. Isn't it true that in 1975, Philip Morris itself concluded that the people smoking the Reds didn't achieve any reduction in smoke by smoking the Lights?
A. I don't think that's true.
Q. Sir, I direct your attention, Your Honor, to Exhibit 3438 that's in evidence. I don't know that the jury has seen this before.
Do you see it on your screen, sir?
A. Yes.
MR. RUSS HERMAN:
May I approach, Your Honor?
THE COURT:
Yes.
THE WITNESS:
Thank you.
MR. RUSS HERMAN:
You're welcome, sir.

EXAMINATION BY MR. RUSS HERMAN:
Q. It's a Philip Morris document; is it not?
A. Yes, it is.
Q. From the Research Department, sir?
A. Yes, it is.
Q. During the time that you were working there; correct?
A. Yes.
MR. RUSS HERMAN:
Your Honor, I'd like to publish the third page.
MR. GAY:
No objection, Your Honor.
THE COURT:
You may publish it.
MR. RUSS HERMAN:
Would you highlight the last paragraph, please? Would you enlarge it, please?
EXAMINATION BY MR. RUSS HERMAN:
Q. Doesn't this experiment conducted at Philip Morris in the Research Department while you were employed there indicate that there was no, in effect, difference to Marlboro regular smokers and their smoke intake than their intake by smoking a Marlboro Light, which was normally considered lower in delivery?
A. That's what this sentence says.
However, that's not the full story. If you'd like me to go into it, I'd be happy to. It's in this document. This document says that Marlboro Red smokers get more tar out of the Marlboro Red cigarette than Marlboro Light cigarette smokers, the

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other Marlboro Light cigarette. That's in this document. This document talks about a very small study over a very short period of time. And it is not a conclusive document.

Q. Sir, did you bring any documents with you in which this study was challenged?

A. This study is challenged in this very document itself. This conclusion is challenged in this very document itself.

Q. Sir, --

A. If you'd like me to go through it -- I'm sorry -- I'll be happy to.

Q. Sir, did you bring any additional documents with you to challenge this conclusion?

A. My knowledge of what went on at Philip Morris and my knowledge of the work is my only information. I'd be glad to share that with you.

Q. Now, this study doesn't talk in this sentence about a light cigarette smoker? It talks about a regular cigarette smoker who switches to lights; isn't that correct?

A. My interpretation of that is that's correct.

But, remember, this is a very small number of smokers over a very short period of time in which they were smoking on the human smoking machine that I talked about yesterday which had -- which had a great impact on the way that people smoke a cigarette. This is what they said.

Q. Well, sir, --

A. And they couldn't smoke the cigarette in the way they normally do.

Q. It was your machine; correct? You all

invented the machine?

A. It was our research experiment.

Q. Your Research Department?

A. Our experiment, yes.

MR. RUSS HERMAN:

If we can, Carl, go down. Let's see all the people in the Research Department that got this document. Would you highlight it?

EXAMINATION BY MR. RUSS HERMAN:

Q. Mr. Dunn again? Dr. Dunn again?

A. Yes.

Q. Ryan?

A. Yes.

Q. Let's go back to the paragraph now.

May I ask you to assist us, to hold up the package of lights and the package of regulars so we can all see?

A. (Witness complies.)

Q. Doesn't this study, this paragraph, say that if I started out smoking Marlboros and switched to lights, I would smoke the lights in order to get the same sort of intake that I was getting from the regulars?

A. I don't know what it would say about you.

Q. Thank you.

A. It was a very small study.

Q. Thank you.

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You don't have any large study, do you, that you brought with you?
MR. GAY:
Objection. Argumentative.
MR. RUSS HERMAN:

I'm asking a question.
THE COURT:
Overruled.
A. I don't have one, no.
EXAMINATION BY MR. RUSS HERMAN:
Q. Do you think that would create an illusion in a consumer who wanted to go to a light cigarette, a light Marlboro, because they thought it was better for them?
A. I don't know that I can answer your question. I don't know what the consumer might think. I don't think so.
Q. You know the question -- That's all. Thank you very much.
The question of Liggett has come up in questioning by some of my colleagues on that side (indicating).
You were at Philip Morris, were you not, when Liggett was the first company to come forward and say that cigarettes were addictive; isn't that true?
A. I was at Philip Morris then, yes.
Q. And you were at Philip Morris when Liggett was the first company to come forward and say that cigarette smoking caused cancer; isn't that true?
A. I believe so, yes.
Q. And you were there at Philip Morris when Liggett was the first company that said, "We'll open and put our documents on the table for everybody to see"; isn't that true?
A. I believe that's also true, yes.
Q. And then Liggett put the word "addiction" on their packs of cigarettes, that is, L & M cigarettes

and they also had Chesterfield cigarettes and Lark. Didn't they -- You were there when they put the word "addiction" on their cigarettes?
A. I believe that's the case, yes.
Q. And none of Philip Morris' cigarettes have the word "addiction"; do they?
MR. LONG:
Objection, Your Honor. Preemption.
MR. RUSS HERMAN:
I'll withdraw the question.
EXAMINATION BY MR. RUSS HERMAN:
Q. Philip Morris then went out and bought the L & M brand name, the Chesterfield brand name and the Lark brand name from Liggett; isn't that true?
A. Yes.
Q. And Liggett never signed The Frank Statement; isn't that true?
A. That may be true.
Q. Now, I want to -- You had a human smoking machine that smoked different than the FTC machine;

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isn't that true?
A. It did.
Q. And the question came up at Philip Morris: Should we -- Don't we have an obligation to point out to the FTC that some cigarette smokers are getting more tar than these FTC ratings? Do you remember that question coming up while you were at Philip Morris?
A. No.
Q. All right. I'm going to show you a document 3408 that the jury has not seen yet but it was admitted during the deposition of Mr. Szymanczyk,

the President of Philip Morris. And I'm going to show it to you and then I'm going to ask that it be -- that The Court have it introduced into evidence.
A. Thank you.
MR. RUSS HERMAN:
Your Honor, I offer 3408 in evidence.
MR. GAY:
No objection, Your Honor.
THE COURT:
If there is no objection, it will be received in evidence.
MR. RUSS HERMAN:
I would like it published to the jury, Your Honor.
THE COURT:
You may publish it.
MR. RUSS HERMAN:
Would you put the first part of that which shows the date? Would you enlarge it?
EXAMINATION BY MR. RUSS HERMAN:
Q. This is written to Dr. Wakeham, who was a Vice-President of Research at the time; correct?
A. I believe he was, yes.
Q. It even shows Wakeham's stamp date on the right? The date he received it, March 8th, 1974; correct?
A. It does, yes.
Q. It says, "Moral Issue on FTC Tar"; correct?
A. Correct.
Q. Have you ever seen this document before?
A. Yes, I have, in preparation for litigation

like this in the courtroom.
Q. But no one ever showed it to you while you were working in research; correct?
A. I didn't see it then, no.
Q. And none of the lawyers for Philip Morris showed it to you while you were pulling documents for them; did they?
A. Not that I recall.
Q. And in your search of Philip Morris documents, just two years before when you went to work there, you didn't look at the document or find it; did you?
A. I've already said I don't recall seeing it.

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MR. RUSS HERMAN:
All right. Would you highlight the first two paragraphs, please? Could you embolden those, please?

EXAMINATION BY MR. RUSS HERMAN:

Q. "Some concern has been expressed concerning the moral obligation of Philip Morris (and perhaps the tobacco industry) to reveal to the FTC the fact that some cigarette smokers may be getting more tar than the FTC rating of that cigarette. You mentioned in your presentation at the Center on Tuesday, March 5th, that such concern was voiced in New York at your talk there. And it was expressed again by some individuals who heard you in Richmond.

"I believe that there need be no such concern, at least from a position of morality. It is obvious that HEW knows that smokers can vary their intake. Otherwise, they would not urge smokers to take fewer puffs. There are published

papers which show that different puffing patterns on the same cigarette will yield different amounts of tar."

Did I read that correctly?

A. Yes, I believe you did.

Q. Now, here's the question.

You had a human smoking machine that smoked differently than the FTC machine. Is it your contention as an expert as you sit here today that Philip Morris had no obligation to tell the FTC, "We've got a human smoking machine and its numbers are coming up differently than yours"?

A. What we did tell the FTC, and I think we did have an obligation to tell the FTC, when they published their method, we told them that that method would not measure what any one cigarette smoker got, it wouldn't measure what the average cigarette smoker got, it was only capable of comparing one cigarette with another.

The FTC knew that; the Health, Education and Welfare organization, which is indicated here, knew that; I think smokers, in general, know that. I don't know that, that they do. But it makes sense that they do. The number of puffs they take, the number of cigarettes they smoke.

Q. Let me ask the question again.

Not what you told the FTC about their machine. As you sit here today as an expert for Philip Morris, is it your contention that Philip Morris had no obligation, moral or otherwise, to tell the FTC that you had a different machine that smoked more like humans and the numbers were coming

up differently?

MR. SCHNEIDER:
Objection, Your Honor. May we approach?
THE COURT:
Yes.
(Whereupon a bench conference is held at

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this time as follows:)
THE COURT:
Mr. Schneider.
MR. SCHNEIDER:
Yes, Your Honor.
The question is asking whether or not Philip Morris had an obligation to tell the FTC something. There is no such cause of action for that. Under the Buckman case, a claim that there is some tort arising out of a duty to tell something to a federal agency is preempted and shouldn't be the subject of questioning of this witness in this case.
THE COURT:
Response?
MR. STEPHEN HERMAN:
We've briefed that twice.
And the FDA regulations are much different than the FTC regulations. For one thing, the FDA regulations specifically say that there is a cause of action to be enforced solely by the FDA. If you misrepresent stuff to the FTC, legislation says that this does not enlarge or enhance or revise the regulatory authority of the FTC.
So, yes, in the context of the FDA,

there might be a preemption. But the FTC legislation has a very distinct and different and nonexpansive grant of authority with respect to cigarette advertising.
THE COURT:
But there's no cause of action in this case for that; is there?
MR. STEPHEN HERMAN:
There's a cause of action for fraud through concealing information, which is specifically found to be not preempted by Cipollone. And part of the concealment is the fact that this issue --
THE COURT:
But that's not the thrust of the question. The thrust of the question is whether they thought they had a moral obligation to tell the FTC they had a different machine.
I think the objection is well-taken. I'll sustain the objection.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
The objection is sustained. Don't answer that question.
Next question, please.
MR. RUSS HERMAN:
You can take that down now, Carl. Thank you.
EXAMINATION BY MR. RUSS HERMAN:
Q. Now, you spoke about, on direct examination

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-- Strike that.
I'd like to publish on the witness' screen and Your Honor's screen and learned counsel's screen Exhibit 0681.02.
Is it on your screen now, sir?
A. Yes, it is.
Q. Do you see the seal of the United States in the background of that photograph?
A. It's vague but I think so, yes.
Q. Do you see on the far right a gentleman with his right hand raised swearing?
A. Yes, I do.
Q. That gentleman, sir, am I correct, was William Campbell, President and CEO of Philip Morris U.S.A. in 1994 while you were employed there?
A. That's correct.
Q. And on April 14th, 1994, he, along with other representatives of tobacco companies, testified in a congressional hearing; correct?
A. I don't recall the date exactly. I won't argue with that.
Q. Do you recall that it's approximately correct?
A. Yes. Yes.
MR. RUSS HERMAN:
Your Honor, I'd like to publish as identified by the witness Exhibit 0681.02.
MR. GAY:
The same objections as before, Your Honor.
THE COURT:
Mr. Gay, I'm not sure I know what you

mean. If you'd like to approach the bench, you may.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Mr. Gay.
MR. GAY:
Your Honor, first of all, this is asking the witness to comment on testimony outside of this case of other witnesses. Secondly, this is protected speech under -- before Congress. And I think, thirdly, it's repetitious. He's already asked him about this.
MR. RUSS HERMAN:
This exhibit is not in evidence yet. He's identified it, he's been the first witness to do that. The Knorr-Pennington objection has been overruled now three times, both in lengthy briefs and motions.
And this is the predicate specifically for the next document in which Philip Morris explains this testimony which was published publicly. And, therefore, if any protection ever existed, Philip Morris waived it by publishing in the newspapers this congressional testimony.

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THE COURT:
Who asked this witness about this testimony? Was it on direct or cross?
MR. LONG:
On cross, he said do you have any --

THE COURT:
No, no, no, this is -- Not today. Earlier, not today.
MR. LONG:
Yes, it was yesterday.
Remember, I objected to Mr. Herman asking do you have any evidence to dispute the fact that the CEOs testified before Congress that cigarette smoking is not addictive.
MR. RUSS HERMAN:
He said he told his kids but he didn't -- and he told someone higher up but he never wrote them.
THE COURT:
Yes.
MR. LONG:
If I could comment, Judge, there's a doctrine. The case is TWA versus Mendelson. I don't know if I have a copy -- I don't have a copy with me. But it says you cannot impose civil liability upon statements made, compelled congressional testimony. There's an immunity from civil liability for that.
MR. RUSS HERMAN:
That's not the issue here. This is a predicate for the next document.
THE COURT:
The objection --
MR. LONG:
Putting it into evidence is attempting to impose civil liability based upon this

statement.
MR. RUSS HERMAN:
No, I'm not.
THE COURT:
The objection is overruled.
(Whereupon the bench conference is concluded at this time.)
MR. RUSS HERMAN:
May we publish, Your Honor?
THE COURT:
Yes, you may publish it.
MR. RUSS HERMAN:
I offer this exhibit in evidence.
MR. GAY:
The same objections, Your Honor.
THE COURT:
Overruled. It will be received in evidence.
MR. RUSS HERMAN:
Now, I would like to -- That is Exhibit

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0681.02. Your Honor, I would now like to post on the screen the Demonstrative JW-19. I'd like to display this to the jury, Your Honor, and to the witness.

EXAMINATION BY MR. RUSS HERMAN:

Q. I ask the witness in that connection is this a fair and accurate representation of William Campbell, President and CEO of Philip Morris U.S.A., April 1994?

THE COURT:

You may publish it.

MR. GAY:

The same objections.

A. Yes, I believe that to be Mr. Campbell.

EXAMINATION BY MR. RUSS HERMAN:

Q. Now, shortly after Mr. Campbell swore to Congress, didn't Philip Morris publicly publish full-page advertisements about the testimony he and other tobacco company executives gave to Congress?

A. They may have. I don't recall it.

MR. RUSS HERMAN:

All right. May I approach the witness, Your Honor, with Exhibit 3509.01, which the jury has not seen and is not yet in evidence entitled "SMOKERS AND NONSMOKERS: FACTS YOU SHOULD KNOW"?

May I approach, Your Honor?

THE COURT:

You may approach the witness.

THE WITNESS:

Thank you.

MR. RUSS HERMAN:

You're welcome, sir.

EXAMINATION BY MR. RUSS HERMAN:

Q. That has the Philip Morris logo at the bottom; correct?

A. Yes.

Q. And it has Philip Morris' 1-800 number on it, doesn't it, at the bottom?

A. It does have a 1-800 number, yes.

Q. And at the top, it says that Philip Morris is publishing this document; correct?

A. Yes.

MR. RUSS HERMAN:

Your Honor, in connection with the testimony, I would like to offer into evidence Exhibit 3509.01, which the jury has not yet seen.

MR. GAY:

No objection, Your Honor.

THE COURT:

You may publish it. It will be received in evidence.

MR. RUSS HERMAN:

Carl, would you please display it for the jury? Would you, Carl, blow that up above the line?

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EXAMINATION BY MR. RUSS HERMAN:
Q. Would you mind reading this for the record, sir?
A. "SMOKERS AND NONSMOKERS: FACTS YOU SHOULD KNOW. Both smokers and nonsmokers deserve to know facts, not innuendo, about cigarettes. Yesterday, Philip Morris and other U. S. tobacco manufacturers helped to set the record straight by speaking before a Congressional committee. For your consideration, here are the highlights of the information presented by Philip Morris in that session."
Q. Now, Philip Morris presenting the highlights in that session, as far as you know, was voluntary; wasn't it?
A. I don't know that it was or it wasn't. I really don't know.
Q. You think -- Do you have any information that somebody paid or forced Philip Morris to print this publicly --

A. No.
Q. -- about what happened in the session?
A. No, I don't.
Q. All right. Let's go to Fact Number 1.
The first line under Fact Number 1, Carl, can you do that?
This is what Mr. Gay asked you yesterday. "Philip Morris does not add nicotine to its cigarettes." Correct?
A. And that's true.
Q. Let's go to the second fact. Can you enlarge Fact Number 2 for us, Carl?
It's a representation by Philip Morris that it does not manipulate nicotine levels; right?
A. And that is true, also.
Q. And that's -- Sir, it's your opinion it's true?
A. Yes.
Q. Okay. Now, this is a representation by Philip Morris publicly; isn't it?
A. Yes.
Q. All right. Let's go to Fact Number 4. Wait one second, Carl.
In 1994, six years after the Surgeon General report reported that nicotine and cigarette smoking was addictive; do you recall that?
A. Yes.
Q. Would you highlight this 1994 representation of Philip Morris? That's a representation to the public; isn't it?
A. Yes.
Q. It wasn't till after this suit was filed in

the year 1999 or 2000 that Philip Morris first acknowledged that cigarette smoking was addictive; correct?
A. That's right.
What Philip Morris was doing, in my opinion, at that time, they weren't lying; they were relying

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upon the existing definition of "addiction." Some of us at Philip Morris, me included, disagreed with the way this was presented.

Q. There was no scientific development that you know of at Philip Morris between 1988 and 1994 showing or proving anything more about smoking being addictive that you can point to; isn't that correct?

A. That is correct.

However, I think what Philip Morris did was to accept the changed definition. They were relying on the previous definition. The science didn't change.

Q. Well, why did it take twelve years to do that?

A. I don't know the answer to that.

Q. Okay, sir. Now, you were there when Dr. DeNoble was there?

A. I was, yes.

Q. And Dr. DeNoble has testified in this case; are you aware of that?

A. I've been told that he did --

Q. They didn't show you --

A. -- by you.

Q. Sorry.

They didn't show you his testimony?

A. No, sir, I haven't seen it.

Q. Or his deposition?

A. I haven't seen that either, no.

Q. And Dr. DeNoble was in charge of finding a nicotine analog, that is, a substitute for nicotine; correct?

A. He was one of the -- one of the researchers in that program, yes.

Q. Okay. And as of 1974 when you were there, Philip Morris believed that nicotine caused or contributed to heart disease; isn't that true?

A. I believe they did, yes.

Q. And Dr. DeNoble was one of the people in charge of a laboratory to find a substitute for nicotine that would not cause or contribute to heart disease; isn't that true?

A. That was our hope.

Q. And he had a lab with the windows on his lab darkened so that nobody from outside could see?

A. A lot of times we darkened the windows to keep competitors who might be coming through the laboratory seeing those, yes, sir.

Q. The answer is "Yes"; correct?

A. Yes, they were dark, yes.

Q. And it was restricted as to who could go in and who could go out; isn't that true?

A. Yes, because it was a proprietary research program.

Q. And one day his lab was just gone; isn't that true?

A. Whether it was over a one-day period or not, I don't know. But it was there one time and not there another time. A lot of laboratories are that

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way.
Q. You have no information that would contradict the fact that his lab was gone in one day?
A. I don't have any information to contradict that, no.
Q. Now, isn't it true that his lab disappeared because lawyers did not want anybody to know about the nicotine and the addiction experiments that were going on in that lab?
A. I can't answer that because I don't know.
Q. All right. Well, let's look first --
A. I don't think that would be the case, but I don't know.
Q. Okay, sir. Let's look first at Exhibit 1164, which was discussed but not displayed. It was admitted in evidence on 2-6-03.

MR. RUSS HERMAN:

Your Honor, I'd like to place this Exhibit 1164 on the screens. And then I'd like to display it to the jury while we discuss it.

MR. GAY:

May we approach, Your Honor?

THE COURT:

You may approach.

(Whereupon a bench conference is held at this time as follows:)

THE COURT:

Mr. Gay.

MR. GAY:

Your Honor, there is a previously agreed upon stipulation about this whole set of

documents which has to do with a memo that's attached to this letter that Mr. Herman wants to throw up on the screen would be used and not the Shook, Hardy part.

MR. RUSS HERMAN:

That's correct. I'm not using the Shook, Hardy part.

MR. GAY:

But you just said you wanted to put that up on the screen. If you're not going to do that, then --

MR. RUSS HERMAN:

I'm going to show the last page, which is not the Shook, Hardy cover letter.

MR. GAY:

Okay.

MR. RUSS HERMAN:

Look at it first because I don't want to -- Look at the last page.

MR. LONG:

I think that's already in.

MR. GAY:

Okay.

THE COURT:

I don't know that he heard what you said, Mr. Long.

MR. LONG:

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I think this is already in.
MR. RUSS HERMAN:
It may have been read, but I don't think it's been displayed.
(Whereupon the bench conference is concluded at this time.)
MR. RUSS HERMAN:
Your Honor, at this time I'd like to display to the witness -- Carl, would you put up Page 11 on the Judge's screen.
Do you have a copy, sir?
THE WITNESS:
No, sir, I don't. I have it on the screen.
MR. RUSS HERMAN:
I'll give you my copy.
THE WITNESS:
I would, respectfully, ask to have a hard copy.
MR. RUSS HERMAN:
Yes, sir.
THE WITNESS:
Thank you.
MR. RUSS HERMAN:
May we show Page 11, Your Honor, the conclusion of this Philip Morris memo?
THE COURT:
No objection?
MR. GAY:
No objection, Your Honor. I'm sorry.
THE COURT:
You may publish it.
MR. RUSS HERMAN:
Carl, would you embolden the "Conclusion"?
EXAMINATION BY MR. RUSS HERMAN:
Q. Would you read that for the jury, sir?

A. I'm sorry.
Q. Would you read it for the record?
A. Sure.
I'm confused, though. You said it was a Philip Morris memo. I don't think it is. I see no evidence at all that it is.
Q. Sir, by agreement, the transmittal page -- the transmittal which would indicate the information that you see is not going to be shown. You can look at it. You see it there. And I'm representing to you that this document relates to Philip Morris research conducted by Dr. DeNoble.
Please accept what I say to you.
A. So you're asking me to assume that it is?
Q. Yes. That's fine. You can assume it.
A. Well, I don't know anything else to do because it's not a Philip Morris document.
MR. GAY:
Well, it's okay to read it.
MR. RUSS HERMAN:

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Would you read it for the record?
MR. GAY:
Answer the question as asked.
THE WITNESS:
Yes, sir.
MR. RUSS HERMAN:
Read it for the record.
THE WITNESS:
I'd be happy to.
EXAMINATION BY MR. RUSS HERMAN:
Q. Would you read it for the record?
A. Certainly. I'll do it this way.

"Conclusion. Research engaged in, as well as some possibly under consideration, by Philip Morris has undesirable and dangerous implications for litigation positions the industry takes in regard to smoking behavior. The pharmacological nature of the research implies strongly a view of the importance of nicotine.
"What is worse, research reports under Philip Morris' sponsorship contain claims of psychological -- physiological tolerance to nicotine, as well as claims of unequivocal demonstrations of reinforcement by nicotine in animals.
"This kind of research is a major tool of our adversaries on the addiction issue; the irony is that industry-sponsored research is honing that tool. In the final analysis, the performing and publishing of nicotine related research clearly seems ill-advised from a litigation point of view."
Q. You've never seen that before?
A. No, sir.
Q. You were never advised that nicotine and addiction research was ill-advised by lawyers because it would give problems in lawsuits?
A. I was not.
Q. Sir, I'm going to show you, follow up with an Exhibit 3010 that is not in evidence.
And, Your Honor, out of an abundance of caution, I'm going to hand it to the witness and I'm going to approach with a copy so that Your Honor may wish to make a ruling on this document.
Here you are, sir. You can feel free to look at it while we approach.

A. Thank you.
MR. RUSS HERMAN:
May I approach with Mr. Gay, Your Honor?
THE COURT:
Yes.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Mr. Herman.
MR. RUSS HERMAN:
Yes, I want to explain why I am treating this with caution. You have ruled that this document is no longer privileged. The

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privilege was asserted.
It's a long document. The document has in this paragraph Shook, Hardy writing about DeNoble's lab. What I want to publish and ask him about is not the first paragraph because it contains Shook, Hardy's name in connection with this fellow, Mr. Sirridge, and -- but this paragraph (indicating). And the foundation for it is the prior document.
MR. GAY:
Your Honor, I appreciate the way Mr. Herman has handled this. Our objections to this document are that it was prepared by outside counsel. It is hearsay. And it's a work product of outside counsel. It's not a company document. And that's why we would object to it.
I understand this is the only part you want to --

MR. RUSS HERMAN:
That's correct, this paragraph.
The fact that it was prepared by outside counsel doesn't make it not relevant to the issue of why DeNoble's lab was taken down in light of the foundation that's been given.
And as a matter, any document written by outside counsel would be objectionable on that basis and could never be used in any case. Even after the privilege has been decided. I think it's relevant and I think it goes directly to why DeNoble's lab was taken down.
THE COURT:
What's your plan for the use of this?
MR. RUSS HERMAN:
I'm going to ask him -- I'm going to ask that this be displayed at Page 17. I'm going to go back to see Carl to make sure --
THE COURT:
Can you pull that out of the page?
MR. RUSS HERMAN:
Yes, that's what I'm going to ask him.
THE COURT:
Okay.
MR. RUSS HERMAN:
If he can't do it, then I won't do it; if he can do it, then I'm going to ask the witness to read this paragraph from the document.
THE COURT:
The privilege claim has already been

disposed of?
MR. GAY:
You ruled on that, yes, Your Honor.
THE COURT:
Okay. And what's your objection at this point other than the outside counsel?

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MR. GAY:
Hearsay as well.
THE COURT:
I'm going to overrule that objection.
Proceed, Mr. Herman.
(Whereupon the bench conference is concluded at this time.)
MR. RUSS HERMAN:
Your Honor, we offer Exhibit 3010 in evidence as redacted.
THE COURT:
Any objections other than the ones stated at the bench?
MR. GAY:
Other than those stated, Your Honor, no.
THE COURT:
The objection is overruled. It will be received in evidence.
MR. RUSS HERMAN:
All right. Mr. Gethers, Carl, you have the paragraph in question on the screen. Would you please put it up for the witness and the jury?
THE COURT:
You may publish it.
EXAMINATION BY MR. RUSS HERMAN:

Q. Sir, do you have any contrary written evidence that Dr. DeNoble's lab was discontinued and he was terminated other than because the experiments he was doing were about nicotine and addiction?
A. I have knowledge, personal knowledge, of the fact that we were unable to find compounds that we were looking for that only had the central nervous system effect without the peripheral nervous system effect. We couldn't find that, so there was no longer a need for this program.
Q. Sir, you didn't bring any document with you to that effect; did you?
A. Only personal knowledge.
Q. And you have no documents with you that contradict Dr. DeNoble that it was the lawyers that closed his lab and had him fired?
MR. GAY:
Objection. Misstates the testimony of the witness.
THE COURT:
Sustained.
EXAMINATION BY MR. RUSS HERMAN:
Q. All right. Let's move on.
By the way, Dr. DeNoble's analog was patented as an insecticide; wasn't it?
A. I don't know which compound you're talking about. We may have one patented as an insecticide.
Q. A nicotine analog?
A. I don't know that.
MR. RUSS HERMAN:
Your Honor, I'd like to put up JW-22. This is a demonstrative of the various

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cigarettes made by the various companies who are defendants here.

May I publish?

THE COURT:

No objection, I presume?

MR. GAY:

No objection.

THE COURT:

You may publish.

EXAMINATION BY MR. RUSS HERMAN:

Q. As an analytical chemist, has hydrogen cyanide been eliminated from all of these cigarettes?

A. It hasn't been eliminated from any of them.

Q. Has methane gas been eliminated from any of these cigarettes?

A. No. However, there are certain, on all these cigarettes, there are certain ones that are higher in constituents than others.

Q. Has isoprene --

Let's go back. Methane gas has actually been identified in cigarette smoke; isn't that correct?

A. Yes.

Q. Isoprene has been identified in cigarette smoke; isn't that correct?

A. Yes.

Q. Has isoprene been eliminated from all of these cigarettes?

A. No.

Q. Butadiene has been identified in cigarette smoke specifically; correct?

A. Yes.

Q. Has it been eliminated from all of these cigarettes?

A. No, it has not.

Q. Acetylene has been identified in cigarette smoke; hasn't it?

A. Yes.

Q. Has it been eliminated from all of these cigarettes?

A. No.

Q. Any of them?

A. No. But it has been -- all those compounds you just stated have been vastly reduced since the fifties.

Q. Sir, has benzene been identified in cigarette smoke from these cigarettes?

A. Yes.

Q. Is there any cigarette which has eliminated benzene from its smoke?

A. No.

Q. Has toluene -- I don't know if I'm pronouncing it right.

A. That's pretty close.

Q. Has toluene been identified in cigarette smoke?

A. Yes, it has.

Q. Has it been eliminated from any of these cigarettes?

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A. No, just reduced it.
Q. Has acetaldehyde been identified in cigarette smoke?
A. Yes.
Q. Has it been eliminated from any of these

cigarettes?
A. No, just reduced it.
Q. Acrolein, has it been identified in cigarette smoke?
A. Yes.
Q. Has it been eliminated from any of these cigarettes?
A. No, just reduced.
Q. Now, all of these chemicals and compounds that I've just named pose specific hazards; do they not?
A. I could think of some hazard for probably all of them at certain concentrations, yes.
Q. Now, if we looked either in the Surgeon General's reports or in the Hoffman article that you identified previously or in the 1961 or '62 documents proposed by Dr. Wakeham and Bavley of Philip Morris, we would find a whole list of toxins and carcinogens that still have not been removed from these cigarettes; isn't that true?
A. That's true. They've just been reduced the best we can. We've gotten them down as low as we can in all the cigarettes we can.
Q. Now, you mentioned, sir, families of cigarettes. I want to see if I've got the whole family correct. Or at least have them organized in family. There's a family of Merits made by your company, part of the family of Virginia Slims, we've got Marlboros here, different Virginia Slims, Benson & Hedges, Benson & Hedges, Benson & Hedges, Merits, Merits. I think those are additional Marlboros.
All right. We have four families here.

A. Those are repeats. Do you want to put them back or --
Q. Sure. I'm going to put them in the cigar box. Thank you.
Now, I'm supposed to step back from you at this point and I will.
A. Okay.
Q. So I'm going to need you to help me.
Would you hold up the Merit family?
A. (Witness complies.)
Q. What do you contend is the best, most improved Merit in that family?
A. Of the ones you gave me?
Q. That's all I got, so --
A. The Merit Ultra Lights, I think, would be the most improved.
Q. But you're selling these others; aren't you?
A. Yes, we are.
Q. And you've been selling them? That's because they have higher tar and higher nicotine than the

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pack you held up; right?
A. Yes.
Q. Okay. Let's look at the Marlboro family.
A. The ones we've got here (indicating).
Q. What's the best, most improved of the Marlboro family you've got up there?
A. I think the Lights is.
Q. Hold them up.
A. Marlboro Lights.
Q. Are you still selling those Reds?
A. Yes.
Q. Even though those others are more improved?

A. I believe so, yes. I can tell you why I think that's true.
Q. Now, pick up the Virginia Slims.
A. (Witness complies.)
Q. Are any of those better than the others?
A. I think so. The Lights is, as far as I'm concerned.
Q. And you're still selling the others?

MR. SCHNEIDER:
Your Honor, objection. May we approach?

THE COURT:
You may approach.

(Whereupon a bench conference is held at this time as follows:)

THE COURT:
Mr. Schneider.

MR. SCHNEIDER:
Your Honor, the suggestion of this line of questions is that it's somehow improper to offer higher tar cigarettes on the market than the ones that's lowest that the company makes.

The companies have a legal right to sell these products under federal law. And the suggestion that they should take any one off the market or shouldn't sell the higher tar one is a preempted claim squarely under FDA v. B & W. And this has been held in the Engle case recently down in Florida that the companies have a legal right to sell these products, have a right to advertise them.

And to suggest that there shouldn't be

particular ones on the market, so long as they bear the warning, they have the legal right to make them and put them out. And the fact that they make a lower tar one doesn't mean the higher tar ones have to be taken off the market.

THE COURT:
That would be appropriate in redirect. The objection is overruled.

(Whereupon the bench conference is concluded at this time.)

EXAMINATION BY MR. RUSS HERMAN:
Q. And you have a family called Benson & Hedges;

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correct?
A. Yes.
Q. Hold them all up.
THE COURT:
Mr. Herman, I think you need to turn your microphone on.
MR. RUSS HERMAN:
Okay.
EXAMINATION BY MR. RUSS HERMAN:
Q. Would you hold those up for the jury, please?
A. Yes.
Q. It shows it's on.
I put little red tabs on three of those. Do you see those?
A. Yes.
Q. Hold up the ones with the red tabs.
A. (Witness complies.)
Q. Sir, show the jury the Lights, Benson & Hedges Lights.

A. Ultra Lights.
Q. Ultra Lights.
One's menthol and the other's just an Ultra Light without menthol; right?
A. That's right.
Q. What's the third pack?
A. Premium Filter, Benson & Hedges 100s Premium Filter.
Q. It doesn't say Lights on it; does it?
A. No, it does not.
Q. It doesn't say Ultra Lights; does it?
A. No, it does not.
Q. Now, have you given sworn testimony in which you confirmed that the Ultra Lights actually had more tar and nicotine than the ones that didn't have the word Lights or Ultra Lights on them?
In the case of the United States versus the tobacco companies, you gave a deposition; correct?
A. Correct.
Q. And you were questioned in that deposition; were you not?
A. Right.
Q. And you were questioned from a document.
And in that document, you were asked if it wasn't true, according to the filing with the FTC, that the Benson & Hedges regular filters had more -- had less tar and nicotine and Ultra Lights had four times the amount that the regulars had?
MR. GAY:
Objection, Your Honor.
EXAMINATION BY MR. RUSS HERMAN:
Q. Isn't that true?

MR. GAY:
Objection.
THE COURT:
Approach the bench.
(Whereupon a bench conference is held at this time as follows:)

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THE COURT:
Mr. Gay.
MR. GAY:
Your Honor, I'm sorry to interrupt.
But Mr. Herman, apparently, has some different view of how to use a deposition to impeach a witness. You go to the deposition first instead of asking the question and then using --
THE COURT:
Yes.
MR. RUSS HERMAN:
Your Honor, if you go back to questions I asked him, the prior question, he paused, couldn't answer the question, so then I repeated it.
THE COURT:
But you're going to get called on it if you don't do it the way the law says you need to do it, so do it that way.
MR. RUSS HERMAN:
Okay.
(Whereupon the bench conference is concluded at this time.)

EXAMINATION BY MR. RUSS HERMAN:

Q. Do you recall giving testimony under oath

that, according to an FTC registration document, Benson & Hedges regular had four times less tar and nicotine than the ones that had Ultra Light?

A. I can tell you what I do remember.
What I remember giving testimony about was a Benson & Hedges packing, 70 millimeter packing, a cigarette that long (indicating), which isn't Ultra Lights, has lower tar and nicotine than the lowest Ultra Lights, it does.

Q. Sir, do you recall giving testimony where you were asked about the nicotine levels in Benson & Hedges regular filters as compared with the Ultra Light, that they had approximately four times the amount of nicotine and tar?
MR. GAY:
Objection.
THE COURT:
Do you wish to approach the bench?
MR. GAY:
It's the same objection, Your Honor.
THE COURT:
Overruled. Answer the question, if you're able to.

A. I don't remember the exact testimony.
The regular 70 millimeter cigarette, the Benson & Hedges, a very short cigarette, does have less tar and nicotine than the Benson & Hedges Ultra Lights.

EXAMINATION BY MR. RUSS HERMAN:

Q. Now, --

A. But the 70 millimeter isn't meant to be an ultra light. It's a very low tar cigarette, also.

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And it has been for a number of years.
Q. Sir, the one marked Ultra Light has four times the nicotine and tar in it; doesn't it?
A. Than the little short cigarette?
Q. Yes.
A. Yes, I think that's right. I'm not sure of the exact numbers.
Q. And you were asked on a previous occasion: Don't you think that would be confusing to people that wanted to smoke a light cigarette, that they might switch to an ultra light cigarette and get four times the amount of nicotine and tar from the regular?
A. I may have been asked that. I don't recall it.
Q. Do you recall saying when you were asked that question, you didn't know, you didn't buy cigarettes or words to that effect?
A. I don't remember saying that.
Q. Now, let me see if I can find it.
Jack, while I ask these other questions, would you take this testimony? It's somewhere around here, 264 to 267. I need my original notes. It will be on one of those tabbed pages.
I just have a couple more questions for you.
A. Okay.
Q. And we're going to try to get through them very quickly as soon as I find my notes. Either I need to be refreshed --
A. Can I help you come look for them?
Q. Yes, you can. Come on down. Come on down. We can look together. I'd like to expedite this.

Yes, that's it, 264 through 267. Just hand that to me.
I'll show you Page -- I need the cover. Just give me the whole deposition, Steve. I've got it here.
You gave a deposition in a case of United States of American versus Philip Morris and the other -- and a number of other tobacco companies; right?
A. Yes, I think I gave two depositions in that.
Q. On August 29th, 2002, about eight months ago; correct?
A. (Witness nods head affirmatively.)
Q. You were represented by counsel at that time?
A. Yes.
Q. You were sworn to tell the truth; correct?
A. I was, yes.
Q. Now, you can look at all the pages you want.
A. All right.
Q. But I want to expedite this. I'm going to ask you to look specifically at Page 267 from Lines 6 to 20, to see if that refreshes your memory, sir?
A. Do you want me to read what I said?
Q. If you don't mind.
A. It doesn't refresh my memory on this, but I probably would say the same thing again.
Q. Okay. If you would look at Page 267 -- and

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I'll hold my Page 267 -- would you read beginning at Line 6?
A. Yes, I will.
"QUESTION: So according to this Philip Morris document, both the Benson & Hedges

Ultra Light box and the Benson & Hedges Ultra Light Menthol box have about four times as much tar as a regular Benson & Hedges box; correct?
"ANSWER: That's about right." I guess that was my answer.
"QUESTION: You're aware of any reason -- Are you aware of any reason that Philip Morris marketed Ultra Lights with around four times the tar delivery as their regular brand?
"No.
"Would that be confusing to you personally buying cigarettes?"
There was an objection.
Then I said: "I can't answer your question. I'm not buying the cigarettes, so I don't know."
Q. Thank you.
A. "I'm not buying those cigarettes."
Q. Thank you.
You can just hold it up there. Because I just have one more question. We're approaching what some of us call get home and pull up the car on the neutral ground weather, so I'm going to try and just ask you one more question.
A. Okay.
Q. Did you study Latin as a chemist?
A. No, I did not.
Q. Would you hold up the Philip Morris Red for me? It's got a Philip Morris logo on it. Do you see under the emblem veni, vidi, vici?

A. No, I do not.
Q. Wow, it's off of there. That's amazing.
MR. GAY:
Objection to counsel's comment. What is this all about?
EXAMINATION BY MR. RUSS HERMAN:
Q. Well, do you see it on the Merit?
A. I think that's what it says, yes.
Q. Well, let me show you the one in evidence at the beginning of trial, SA-4969. It's on that pack of Reds; isn't it?
A. Yes.
Q. When did it come off; do you know?
A. I don't know that it actually came off. These are two different packings.
Q. What does veni, vidi, vici mean?
A. I don't recall.
Q. I came, I saw, I conquered?
MR. GAY:
Objection to counsel testifying.

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EXAMINATION BY MR. RUSS HERMAN:
Q. Is that what it means?
THE COURT:
There's an objection. Approach the bench.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
You didn't ask the question properly, so I'm going to sustain the objection. You can try again.
MR. GAY:

Your Honor, I'd ask that it be stricken. And I'd ask that Mr. Herman follow the rules. He knows what the rules are, he's not supposed to be testifying and he shouldn't be doing it. He should be admonished.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
The jury will disregard Mr. Herman's statement. Next question, Mr. Herman.
EXAMINATION BY MR. RUSS HERMAN:
Q. Do you know what the words "I came, I saw, I conquered" mean in Philip Morris' intention?
MR. GAY:
Objection. Foundation.
MR. RUSS HERMAN:
May I approach, Your Honor?
THE COURT:
The objection is overruled. Answer the question, if you're able to.
THE WITNESS:
I'm unable to. I don't know the answer.
MR. RUSS HERMAN:
Thank you very much. You've been patient with me.
THE WITNESS:
You're welcome.
THE COURT:
End of cross? End of cross?
MR. RUSS HERMAN:
Yes, Your Honor. I'm sorry. I apologize.

THE COURT:
We will recess until five after 3:00 by the wall clock.
(Whereupon the jury is excused at this time.)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiff counsel?
MR. RUSS HERMAN:
No, Your Honor.
THE COURT:

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Defense counsel?
MR. WITTMANN:
No, Your Honor.
MR. LONG:
I've got one thing, Your Honor.
When Mr. Herman and I and Mr. Gay were at the bench talking about Exhibit 3010 --
MR. RUSS HERMAN:
Yes.
MR. LONG:
-- we had an exchange as we departed. And, unfortunately, I think the court reporter didn't get it down. I should have repeated it. But I had asked Mr. Herman how much he was trying to admit of this document, if he was trying to introduce the whole document. And he said it would be redacted. Then you said you offered it as redacted. But I'm not sure that we have an agreement on

what's to be redacted.
MR. RUSS HERMAN:
We haven't redacted it yet. I will allow you to submit the redaction you think is appropriate.
MR. LONG:
Okay.
MR. RUSS HERMAN:
And that will take care of that, sir.
MR. LONG:
Thank you.
THE COURT:
Anything else?
MR. LONG:
No, Your Honor.
THE COURT:
We will recess until five after.
(Whereupon a brief recess was taken at this time from 2:49 o'clock p.m. to 3:04 o'clock p.m.)
THE BAILIFF:
All rise for the jury, please.
(Whereupon the jury joins the proceedings at this time.)
THE MINUTE CLERK:
All rise, please. Recess is over. Court will come to order. Please be seated.
THE COURT:
Mr. Gay, are you ready for redirect?
MR. GAY:
Yes, Your Honor. Thank you. Good afternoon, everyone.

THE JURY:
Good afternoon.
MR. GAY:
Dr. Whidby, you're in the homestretch. Let me just express on behalf of everyone, all people concerned, we appreciate your

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patience with us. And it will just be a little bit longer.

Ted, could you pull up Exhibit 3515?

May we publish, Your Honor?

THE COURT:

Objection?

MR. RUSS HERMAN:

No objection. This is in evidence, Your Honor.

THE COURT:

You may publish it.

REDIRECT EXAMINATION

BY MR. GAY:

Q. Mr. Herman showed you this document. Remember this? This was a document involving the meeting in New York in 1978.

Do you remember this document?

A. Yes, sir, I do.

MR. GAY:

Ted, could you blow up the bottom paragraph of this document on this page?

EXAMINATION BY MR. GAY:

Q. Now, you see, Mr. Herman asked you about no written record as if there was something inappropriate about that?

Do you remember that question?

A. Yes.

MR. GAY:

All right. Go back to the document, Ted, the full document.

And let me just hand it to you. Do you have it in front of you, Dr. Whidby?

THE WITNESS:

No, I don't. But I have it on the screen here and up there (indicating).

MR. GAY:

All right. Let me just hand you the document.

THE WITNESS:

Okay.

EXAMINATION BY MR. GAY:

Q. Now, he pointed out to you this "no written record" aspect of the document. How many pages is this document?

A. The document is five pages long.

Q. And is it all about the meeting, what they discussed?

A. Yes, it is. It mentions what they discussed.

Q. Is that a written record of the meeting?

A. Yes, sir.

Q. You indicated that Philip Morris strictly adhered to, from your observations and your experience over thirty years, this document policy for retaining documents; right?

A. Right.

Q. Keeping documents safe?

A. Right.

Q. Filing them?

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A. Right.
Q. So that they could be obtained by anybody who was authorized to get them?
A. Correct.
Q. Do you agree with me that Philip Morris U.S.A.'s document policy must have been followed because Mr. Herman has been reading documents Philip Morris U.S.A. has saved since the 1950s for the last six months?
A. Yes.
Q. And some of those documents are not particularly flattering to the company; are they?
A. No, they're not.
Q. But at Philip Morris, people were encouraged to write what they thought?
A. Absolutely.
Q. And there were hundreds of scientists at Philip Morris expressing their thoughts; were there not?
A. Thousands of thoughts. Hundreds of people, yes.
Q. Some of these people had good ideas and some of them had bad ideas?
A. That is absolutely correct, yes.
Q. And they put them in writing?
A. They did.
Q. And Philip Morris saved them?
A. We did.
Q. They saved even the ugly and bad ones?
A. We did.
Q. Now, with regard to this addiction issue, Dr. Whidby, are you aware that the Surgeon General

declared in 1964 that intoxication and tolerance were part of how he would determine whether cigarettes were addictive?
A. I am, yes.
Q. And that was the definition that Philip Morris continued -- plenty of people at Philip Morris continued to believe was the correct definition for "addiction"; correct?
A. That is correct, yes.
Q. You knew that?
A. Yes.
Q. A lot of people agreed with that?
A. That is correct.
Q. A lot of people didn't agree with it?
A. That's also correct.

MR. GAY:
Now, Ted, could you please pull up 3509.01?

EXAMINATION BY MR. GAY:
Q. Now, Dr. Whidby, do you remember this "FACTS YOU SHOULD KNOW" that Mr. Herman showed you on cross-examination?
A. Yes, when he showed me a few minutes ago.

MR. GAY:
All right. May we publish, Your Honor?
THE COURT:
You may publish it.

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MR. GAY:
Now, I wanted to publish the entire second paragraph. And if we could highlight it and blow it up, Ted.
Thank you, Ted.

EXAMINATION BY MR. GAY:
Q. You see where in the second line of that document, Dr. Whidby, Philip Morris opened their manufacturing facilities to the Food and Drug Administration in a good-faith effort to resolve the allegations that we add nicotine or control its level in our cigarettes?
A. Yes.
Q. That's an agency of the federal government?
A. It is.
Q. Do you remember when that happened?
A. Sure do.
Q. And what was it like?
A. They came in and we made presentations to them, I made a presentation to them myself. And they went over all of our manufacturing facilities looking wherever they wanted to look, investigating anything they wanted to investigate. And they concluded, which we knew all along, that we didn't add nicotine.
Q. And you didn't manipulate nicotine levels to addict smokers?
A. No, we did not.
Q. It says that "Our manufacturing process includes over 400 quality control checkpoints and only two of them measure nicotine."
Is that correct?
A. That's correct.
Q. "In every case, and with every brand we manufacture, the nicotine level in the finished cigarette is lower than the nicotine level of the original, natural tobacco leaf."

Is that correct?
A. That is also correct, yes.
Q. And the FDA came and investigated that and you opened your facilities to them for anybody to see?
A. Anybody, anywhere they wanted to go.
Q. Now, nicotine is in the tobacco plant; right?
A. It's in the tobacco plant, in the field, when we buy it, when we use it.
MR. GAY:
Now, could we publish the next paragraph, Ted, and highlight it?
EXAMINATION BY MR. GAY:
Q. Now, Dr. Whidby, this says that "Philip Morris has not used patented processes to increase or maintain nicotine levels."
Is that correct?
A. That's correct.
Q. What is meant by that?
A. There was an allegation that we had patented

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processes where we could add nicotine to our product, and that we were using those patented processes. And we don't do that.
Q. And you've never done that?
A. We've never done that.
MR. GAY:
All right. Would you publish the next paragraph, Ted?
EXAMINATION BY MR. GAY:
Q. Now, Mr. Herman showed you the first line of this paragraph. But the second line, this was published in this advertisement; right?

A. Yes, it was.
Q. And that's directly from the 1988 Surgeon General's report that 40 million former smokers in the United States have quit; correct?
A. Yes, 90 percent of them.
Q. Ninety percent of them quit on their own?
A. That's correct.
Q. Without any outside help?
A. Right.
Q. And that's directly out of the Surgeon General's report?
A. Correct.
MR. GAY:
All right. Would you publish the next paragraph, Ted? And highlight it, please.
EXAMINATION BY MR. GAY:
Q. Now, Dr. Whidby, it's important for, I think -- Strike that. Is there a difference between ingredients in the cigarette and components of smoke when combustion occurs or constituents of smoke?
A. Yes.
Q. There's a significant difference; right?
A. Yes.
Q. When you burn anything, when you burn lettuce, you're going to get many of the compounds in smoke of the burned lettuce that you get in cigarettes?
A. Many of the same compounds. We found that if you burn pure cellulose, you get many of the same compounds you get from tobacco.
Q. And that's called combustion through the burning process?

A. Combustion and pyrolysis, yes.
Q. And pyrolysis. And it's a complicated subject?
A. Very complicated.
Q. And so when you burn a cigarette, you're going to create thousands and thousands of compounds?
A. No question about it.
Q. Some of them in incredibly minute quantities?
A. Most of them in pretty minute quantities, yes.
Q. And they have these big names that sound scary to most people; don't they?

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A. I suppose.
Q. Sort of like the ones Mr. Herman was reading off to you?
A. Yes.
Q. Now, ingredients in cigarettes are tobacco; correct?
A. Yes.
Q. Flavorants --
A. Correct.
Q. -- for taste?
A. Right.
Q. And processing aids --
A. Correct.
Q. -- to help make the cigarette a more quality cigarette?
A. That's right.
Q. And the ingredients of Philip Morris cigarettes have all been tested?
A. Yes, they have.

Q. And they have been scrutinized. What does that mean?
A. I guess looked at very carefully.
Q. By what? By who?
A. By the Department of Health and Human Services.
Q. Since 1986?
A. Yes.
Q. "In addition, an independent safety assessment was conducted by six renowned scientists. Their report concluded: The ingredients added to tobacco in the manufacture of cigarettes by the six major U.S. manufacturers are not hazardous under conditions of use."
A. That was their conclusion, yes.
Q. And that's what the biological testing that has been done on every ingredient put into Philip Morris cigarettes shows?
A. That's right.
Q. Dr. Whidby, there was a question to you about why the companies reported to the federal government all the ingredients that are used in cigarettes without specifying which ingredient went into which product.
A. Right.
Q. Do you remember that question?
A. I do.
Q. Why is that?
A. Ingredients we add to our cigarettes are highly proprietary. They're extremely important to Philip Morris to keep those secret from our competitors.

Just like Coke doesn't want to give away the formula to Pepsi nor Pepsi the formula so Coke can get it. It's that type of proprietary issue, trade secret issue.
Q. Dr. Whidby, are the facts as stated in this advertisement -- go back to the full advertisement,

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Ted -- are the facts as stated in this advertisement reasonable?
A. Yes.
Q. And appropriate?
A. Yes.
Q. And we just talked about testing the ingredients. Let's talk about testing the cigarettes, okay?
First of all, you were asked about this "gentlemen's agreement." Do you remember that?
A. Correct.
Q. Do you have any understanding really of what "the gentlemen's agreement" was?
A. No, I do not.
Q. Well, assume for a moment the allegation is that there was a "gentlemen's agreement" that the companies would not do in-house, in other words, on their premises, biological testing, okay?
A. Okay.
Q. Did Philip Morris do biological testing on its premises?
A. Yes, we did.
If that agreement was in effect, we certainly didn't live up to it. We did testing over the whole time that I was there.
Q. Did it do that testing at Richmond, Virginia?

A. Yes, we did.
Q. Did it do that type of testing at INBIFO in Cologne, Germany?
A. Yes, we did.
Q. Did you share information at INBIFO with Research & Development at Richmond?
A. Very much so, yes. All the time.
Q. Now, do you know if commercial cigarettes as tested for biological activity are any more active than reference cigarettes as tested for biological activities?
A. On an equal tar basis, they're the same.
Q. So do you think there's any reason, any reason to believe that the reference cigarettes that you test and have tested historically biologically are not sufficient to tell you the biological activity of your cigarettes that you manufacture?
A. No.
Q. They're satisfactory?
A. They are very satisfactory, that's right.
Q. Now, after the FDA came into Philip Morris' facilities in 1994, those packs of cigarettes that Mr. Herman showed you, of all the companies' cigarettes, those were all on the market at that time?
A. I assume so. I think so.
Q. Most of them were on the market at that time?
A. Yes.
Q. Marlboro? Merit?
A. Right.
Q. Benson & Hedges?
A. Right.

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Q. The other companies' cigarettes?
A. I can speak more to Philip Morris than any of the other products.
Q. Okay. And you talked about -- He was asking you what's the most improved. Do you remember that?
A. Yes.
Q. And you told him, for example, in the Merit family that Merit Ultra Light was.
A. Between the two, yes.
Q. Now, why do you sell -- why does Philip Morris sell the others?
A. The reason people -- The reason we sell the others is people want to buy the others.
Q. And after the FDA came in and looked at all your facilities and looked at your ingredients and looked at the way you manufactured cigarettes, were any of these cigarettes -- were these cigarettes still lawful to sell?
A. Yes.
Q. Why do you think the Merit Ultra Lights, the Virginia Slims Lights and light cigarettes in general are better?
A. Because they're lower in tar and nicotine.
Q. And you know for a fact, Dr. Whidby, that some people smoke lights and some people smoke full-flavored?
A. They do.
Q. And that's a preference among smokers?
A. That is true.
Q. Smokers are different?
A. Smokers want different things.
Q. And they smoke differently?

A. Yep.
Q. And Philip Morris tries to provide its customers an array of products to satisfy their tastes?
A. We do.
Q. Those packs that Mr. Herman showed you, whether they were light cigarettes or full-flavored cigarettes, every one of them have the Surgeon General's warning about the dangers of cigarettes on them?
A. They do.
Q. Have they had that warning since 1966?
A. They have.

MR. RUSS HERMAN:
Objection. Misstatement. May we approach?

THE COURT:
You may approach.
(Whereupon a bench conference is held at this time as follows:)

THE COURT:
Mr. Gay.

MR. GAY:
It's not my objection.

THE COURT:
It's your objection; isn't it?

MR. RUSS HERMAN:

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No, I objected.
THE COURT:
I'm sorry.
MR. RUSS HERMAN:
Those warnings have been changed since

1966.
THE COURT:
I understand that. And he said it wrong. That warning has been on. It's not the same warning. The warnings have changed. I know that. We're going to try to get out of here by 4:00 o'clock. Let's move on, please.
One more thing, Mr. Gay.
MR. GAY:
Yes, Your Honor.
MR. RUSS HERMAN:
I know you know it. But it's a misstatement.
THE COURT:
I understand that. But I admonished him. I hope he corrects it.
MR. LONG:
Your Honor, if you look at the Q & As, Russ, if you look at the Q & As, they have the Surgeon General's warning on it. And they've had that warning in the Surgeon General's warning.
MR. GAY:
I'll correct it.
MR. LONG:
The text has changed but that warning is on it.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
The objection is sustained. Don't

answer that question.
Next question, please.
EXAMINATION BY MR. GAY:
Q. Dr. Whidby, those warnings in 1966 said that cigarettes may be hazardous to your health?
A. I believe that's right, yes.
Q. And then those warnings changed and said cigarettes are dangerous to your health in 1971, about?
A. Something like that, yeah.
Q. And then in 1985, they changed again and said a variety of things, one of which was cigarette smoking causes lung cancer, heart disease and COPD?
A. There's a rotating warning list now.
Q. All right. Thank you.
Now, we're talking about all those -- I don't know -- what's the right word? What's the lay term for constituents of cigarette smoke? Is there such a thing?
A. Chemicals.

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Q. Chemicals in cigarette smoke, the five thousand plus chemicals in cigarette smoke in these whatever quantities they're in, those have all been reduced over the years?
A. Yes. Very much so, yes.
Q. And they're reduced more in the light cigarettes than they are in the full-flavored cigarettes?
A. Yes, they are.
MR. GAY:
Ted, could you pull up, please, Exhibit 3743?

And could we publish, Your Honor? This was shown to the witness.
MR. RUSS HERMAN:
No objection.
THE COURT:
No objection. You may publish it.

EXAMINATION BY MR. GAY:
Q. Dr. Whidby, do you remember this document that Mr. Herman showed you?
A. Yes.
If possible, could I have a hard copy?
Q. Yes, I've got one right here.
MR. GAY:
May I approach the witness, Your Honor?
THE COURT:
Yes.

EXAMINATION BY MR. GAY:
Q. Do you remember that he only showed you the title of this document?
A. Yes.
Q. He didn't show you anything else about it; did he?
A. No, he did not.
Q. And the title is --
Ted, would you blow up the title, please, right there sort of in the middle?
"MANIPULATING SMOKE IMPACT IN VERY LOW (Less Than Eight Milligram Tar) DELIVERY CIGARETTES," do you see that?
A. Yes.
Q. Does that have anything to do with free nicotine?

A. No.
Q. That's what he was asking you about; wasn't he?
A. That's what it seemed like he was asking me about.
Q. He was trying to suggest to you that this somehow was some study by Philip Morris about free nicotine?
A. It was not.
Q. Now, in fact, the problem with low delivery cigarettes is that they don't have good taste; right?
A. They don't have much taste at all.

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Q. And so when you talk about manipulating the smoke impact, you're trying to find flavorants that could be used in very low-delivery cigarettes so people would like to smoke them?
A. Right.
Q. And that was -- At least the theory was that that might be better for people's health?
A. That is correct.
Q. And that's why you were trying to -- that's why this was being studied, manipulating smoke impact in very low-delivery cigarettes?
A. To make them more acceptable, that's right.
Q. It was not to increase nicotine delivery; was it?
A. No, it was not.
Q. Smoke impact, tell the jurors what smoke impact is all about.
A. Maybe a way I can explain it is if you get frozen orange juice and you follow the directions on

the frozen orange juice, maybe it's a can of the orange juice and two cans of water or whatever, that would be normal orange juice. And maybe that would be represented by a full-flavored cigarette.
But if you added eight cans of water rather than the two cans as suggested, that would be what a very low-delivery cigarette might taste like. It wouldn't taste very good, so you'd need to add some flavorants of some sort to flavor that back up to the point where somebody would accept it.
Q. And that wasn't adding nicotine; was it?
A. No, it was not.
Q. It was adding other types of flavorants that were being studied by Philip Morris for years?
A. Right.
Q. Trying to improve the taste of low-delivery cigarettes so people would smoke them?
A. Right.
Q. They weren't very popular in the marketplace; were they?
A. No, they were not.
Q. Because they didn't have the taste of a full-flavored cigarette?
A. That's correct.
And, still, the very low-delivery cigarettes are still not very popular in the marketplace.
Q. But the goal was that R & D was to lower delivery to smokers so that it would get less of those constituents that we've been talking about for the last three days?
A. We're still working on that.
MR. GAY:

Ted, would you take that down, please?
Could you bring up Exhibit 3438?
May we publish, Your Honor? This is one of the ones that Mr. Herman showed the witness.
THE COURT:

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You may publish.
MR. RUSS HERMAN:
No objection.
EXAMINATION BY MR. GAY:
Q. This is the report -- one of the reports generated as part of the human smoking simulator project; right?
A. Right.
Q. Now, the human smoking simulator project was about this machine we discussed at some length; right?
A. Correct.
Q. Was this machine in any way able to predict what a human being -- what each human being smoked like?
A. No, in no way.
Q. Was it in any way comparable to the FTC machine?
A. No.
Q. It's something individual smokers get hooked up to; right?
A. Right.
Q. And you described it all yesterday, we don't need to go back into that.
But, Ted, would you turn to Page 5 of this document. And please highlight and blow up the

first two lines under "NOTE."
Now, Dr. Whidby -- Let's let it come up. Okay. Could you center that a little bit, Ted, please?
Now, Dr. Whidby, Tape 17, tell us about that.
A. Well, it says it contains parameter data, that is how the smokers, of all the smokers, how they smoked Marlboro 85.
Q. And that's the Marlboro smokers in the study; right?
A. All the smokers in the study, right.
Q. Right.
What is Tape 39?
A. It contains parameter data for all smokers as they smoked Marlboro Lights.
Q. And, Ted, please go to the top and highlight and blow up the first two rows of the table. And catch the headings at the top, too, of the table.
Can you explain this data for us, Dr. Whidby?
A. Well, as we saw before, Tape Number 17 is all the smokers in this study -- and I think there were nine smokers -- the way they smoked Marlboro full-flavor. And if you look over to the column that says "Tar," they got 20 milligrams of tar.
Tape Number 39 was how all the smokers in the study -- again, nine smokers -- smoked Marlboro Lights. And they got 17.8 milligrams of tar.
Q. That's less?
A. It is less. Yes, it is less.
Q. So what does this indicate to you, Dr. Whidby?
A. That Marlboro Lights give less tar to smokers

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than Marlboro regulars.
Q. And is that the only fair comparison, as you understand it?
A. Yes.
Q. Now, Ted, blow up the tape section again and tell us -- blow up the whole section of the tape section.
Tell us what Tape 34 is, Dr. Whidby.
A. Tape 34 says it contains parameter data for Marlboro Lights, smokers as they smoked Marlboro Lights. As they smoked their own cigarettes.
Q. And what about Tape 40?
A. It's a similar -- It's a tape that contains parameter data for Marlboro 85 smokers as they smoked Marlboro 85. Again, smoking their own cigarette.
Q. Now, let's go back up to the graph, Ted, and show us -- blow up Tape 40 or blow up the data for Tape 40 and Tape 34.
I'm sorry. I need the headings above, Ted. Maybe just blow the whole thing up. I'm sorry. Maybe this will work better.
All right. Explain what the findings on Tape 40 are, Dr. Whidby.
A. Again, Tape 40 is Marlboro 85, people smoking Marlboro 85.
Q. That's the full-flavored Marlboro; right?
A. That's correct.
And the tar they got from that is 21.7, approximately 22 milligrams.
Tape 34 is the Marlboro Light smokers smoking their own cigarettes, Marlboro Lights. And they got

15 milligrams of tar, 15.2 milligrams of tar.
Q. Again, they got less?
A. Yes. In this case, a lot less.
Q. Now, do you know how many smokers participated in this experiment?
A. I believe it was about nine.
Q. Okay. Now, only nine smokers and it showed that the light smokers got less than the full-flavored smokers?
A. Right.
Q. Now, the human smoking simulator, was it ever effective -- You were involved in that project; weren't you?
A. I was.
Q. Was it ever effective in showing how all people smoked?
A. No, it was not.
Q. Why not?
A. Well, we didn't look at all people, to begin with. And all people smoke differently. And it was a very obtrusive piece of equipment. People couldn't smoke like they normally smoked their cigarettes and we discontinued the program.
Q. You discontinued the program because why?
A. We weren't getting useful data for cigarette design, for improving our cigarettes.
Q. Now, there was some suggestion that Philip

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Morris had some obligation to tell the FTC about the way it measured what smokers get from cigarettes.
Do you remember those questions?
A. Yes.
Q. Did the FTC already know that information?

A. Yes.
Q. They knew it in 1966?
A. Yes.
Q. Did the companies tell them that?
A. We did.
Q. Okay. Would any of the data from the human smoking simulator have told the FTC any important information about how people smoked?
A. None whatsoever.
Q. Was the human smoking simulator some great invention that was going to change the course of the way cigarette smoke deliveries were measured?
A. No.
Q. Dr. Whidby, as a person who's worked in the design of cigarette field for over thirty years, did you and the R & D scientists at Philip Morris put forth every conceivable effort you knew how based on your knowledge, experience and the technology available to reduce constituents in tar and nicotine in cigarette smoke in your products?
A. Yes, we did.
Q. And did you do those things as soon as you possibly could?
A. Yes, we did.
MR. GAY:
Bear with me one second.
Thank you very much, Dr. Whidby.
THE WITNESS:
You're welcome.
THE COURT:
End of redirect?
MR. GAY:

End of redirect, Your Honor.
THE COURT:
Fine.
MR. RUSS HERMAN:
May it please The Court, at this time I'd like to make an inquiry as to whether the other companies adopt this testimony?
MR. WITTMANN:
Your Honor, I don't know that I'm called upon to adopt or to do anything else with his testimony. He's testified, the jury has heard it. And I'm satisfied with it, if that's what Mr. Herman is asking.
MR. RUSS HERMAN:
That's fine.
MR. SCHNEIDER:
The same, Your Honor.
THE COURT:
Ditto?
MR. LONG:

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Ditto.
THE COURT:
Thank you. Step down.
THE WITNESS:
Thank you, sir.
MR. RUSS HERMAN:
Thank you, Dr. Whidby.
THE COURT:
We are going to recess at this point. And you already have a little memorandum about your next report date, June 16, a week from Monday. Have a nice week. Thank you

for your attention.
The weather hasn't gotten bad yet. I think you'll have time to get home before it gets really bad. Have a nice week.
(Whereupon the jury is excused at this time.)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs?
MR. RUSS HERMAN:
No, Your Honor.
THE COURT:
Defendants?
MR. WITTMANN:
Yes, Your Honor.
Mr. Herman is, apparently, under some belief that defense counsel are called upon to acknowledge or adopt testimony of witnesses called by other parties. I don't know of any such requirement.
And I would suggest that it's improper for him to do that in front of the jury as he just did.
MR. RUSS HERMAN:
The reason I did that -- and I'd like to respond for the record -- is that you folks have offered what you call a giant -- a joint, J-O-I-N-T, defense witness list, both with expert and fact. And it's been very confusing as this case is going on as to who these folks are testifying for or with.

In addition to that, as I recall -- and I certainly won't make this point before the jury -- the firm of Shook, Hardy is listed both for Lorillard and for Philip Morris. I believe that another firm -- and it may be Adams & Reese -- is listed for Philip Morris and The Tobacco Institute.
And when you call an expert witness to the stand, I think it's perfectly proper under those circumstances for me to ask whether you're adopting the witness' testimony. Because when it gets to closing argument, I have a reference.

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For example, Dr. Seiden is coming here next week, I'm told. He appears on a joint list. I understand he was recruited by RJR, that RJR is going to question him, but that he is listed as a joint defense witness. So --

THE COURT:

I'll hear arguments on that next time we convene if you wish to research it and I'll make a ruling, if necessary.

Anything else by defense counsel?

MR. WITTMANN:

Yes, Your Honor.

MR. RUSS HERMAN:

I'm sorry. Just one other comment.

If a witness is limited to Philip Morris and only called for Philip Morris and only answers questions about Philip Morris, I think it's improper for any other counsel,

for any other defendant to be objecting while I'm interrogating a witness unless you're going to adopt the testimony of the witness.

THE COURT:

Mr. Wittmann?

MR. WITTMANN:

Yes, Your Honor.

We had planned to call Jerry Scott as a witness this afternoon. Because of the lateness of the hour, we're not. And at the noon break, we talked to counsel for the plaintiffs. And we've been assured he'll be here first thing on Monday morning when we come back, so --

MR. RUSS HERMAN:

Well, he's been here three times. We've asked him to be here. And we understand --

MR. CATES:

He's been here three times already, Judge.

THE COURT:

We'll deal with it on the 16th. Anything else?

MR. WITTMANN:

I just want to make that clear, Your Honor, that that was my understanding with Mr. Cates this afternoon at the break, that he'll be here.

MR. RUSS HERMAN:

Your Honor, we have a motion, also, pending on Scott. We've got no idea how his testimony could be relevant in this case.

THE COURT:

I have your motions and we'll hear them before he testifies.

Anything else, Mr. Wittmann?

MR. WITTMANN:

I thought we covered them already in

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chambers the other day.
MR. RUSS HERMAN:
Your Honor, I want to make -- and I know we all want to get out of here -- but I want to make a request that Your Honor consider taking his testimony outside the presence of the jury first so that we can avoid a mistrial if individual issues are inquired about.
MR. WITTMANN:
Your Honor, I'm fully aware of The Court's order. And I'm going to stick within the parameters of your order -- period. There's no need for an out-of-court session with Mr. Scott.
THE COURT:
Mr. Schneider, do you want to say something?
MR. SCHNEIDER:
No, Your Honor.
THE COURT:
Okay. We'll recess until 9:30 on June 16th.
(Whereupon the proceedings were adjourned at 3:45 o'clock p.m.)

* * * * *

REPORTER'S CERTIFICATE

I, CHERYL FOURNET HUFFMAN, Registered Merit Reporter, in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

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